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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 MELROSE INVESTORS 2 LP,

12 Plaintiff,

13 vs.

14 PARAMOUNT PICTURES CORPORATION,
15 DW STUDIOS L.L.C.,

16 Defendants.

Case No.: BC474310

COMPLAINT FOR (1) BREACH OF
CONTRACT; (2) BREACH OF THE
IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING; (3)
FRAUD; (4) UNFAIR COMPETITION;
(5) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

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Los Angeles Superior Court

NOV 29 2011

John A. Clarke, Executive Officer/Clerk
By *[Signature]* Deputy
DOROTHY SWAIN

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INTRODUCTION

1. On Melrose Avenue, at the oldest existing film studio in Hollywood, Paramount Pictures Corporation ("Paramount") routinely calculates "net receipts" to rake in huge returns on one set of books while reporting losses to its profit participants on another.

2. In this case, the "losses" reported by Paramount on behalf of itself and its former subsidiary DreamWorks Studios arose because of Defendants' practices in underreporting the revenues and over-reporting the costs attributable to the 29 films co-financed by their equity partner Melrose Investors 2 LP ("Melrose 2"). Through this lawsuit, Melrose 2 seeks to end Defendants' deceptive practices, and recover the amounts Melrose 2 is owed.

3. In September, 2006, Paramount and DreamWorks Studios, now known as DW Studios L.L.C. ("DreamWorks"), and Melrose 2 entered an agreement through which Melrose 2 would own up to 25% of the copyright interest in up to thirty (30) films that Defendants would produce (the "Agreement"). To acquire this ownership interest, Melrose 2 agreed to fund up to 25% of Defendants' production costs. Melrose 2 met its obligations and has, to date, provided Defendants with roughly \$375 million to produce 29 of their films.

4. By any objective measure, the slate of films financed in part with funding from Melrose 2 (the "Melrose 2-funded films") has been a tremendous success. The Melrose 2-funded films include *Mission Impossible 3*, *Charlotte's Web*, *Dreamgirls*, *Flags of Our Fathers*, *Blades of Glory*, *Transformers*, *Transformers 2*, and *Transformers 3*, among others. Collectively, the Melrose 2-funded films have grossed close to \$7 billion.

5. The funding provided by Melrose 2 has served Defendants well financially. To date, Paramount has taken in more than \$600,000,000 in distribution fees alone from the Melrose 2-funded films, in addition to the untold amounts in actual profits. Indeed, when Paramount's distribution fees are added to the portion of "Net Receipts" not paid to Melrose 2, the amount is almost \$2 billion. Upon information and belief, that figure understates Defendants' actual profits by a significant amount.

6. In contrast, five years after the Agreement was signed, Melrose 2 has still not seen a dollar of profit from its \$375 million investment. As set forth more fully below, this lopsided

1 distribution of earnings comes about as a direct result of Defendants' practice of understating gross
2 receipts, delaying payments to Melrose 2, overstating production and distribution costs and
3 hindering Melrose 2's ability to exercise its audit rights and verify the revenues and costs associated
4 with the films it funded.

5 **THE PARTIES**

6 7. Plaintiff Melrose Investors 2 LP, formerly known as Melrose Investors 2 LLC, is a
7 Delaware Limited Partnership with its principal place of business in New York, New York.

8 8. Defendant Paramount Pictures Corporation is a Delaware Corporation with its
9 principal place of business in Los Angeles, California.

10 9. Defendant DW Studios L.L.C., formerly known as DreamWorks L.L.C., is a
11 Delaware Limited Liability Company with its principal place of business in Universal City,
12 California.

13 10. On information and belief, from January 2006 through late 2008, DreamWorks was a
14 wholly owned subsidiary of Paramount. On information and belief, Paramount retained the right,
15 even after its ownership of DreamWorks ended, to co-finance and co-distribute any new movie that
16 DreamWorks produced through the end of 2009.

17 11. On information and belief, defendant Paramount is and at all relevant times has been
18 a wholly owned subsidiary of Viacom, Inc. ("Viacom").

19 12. On information and belief, Viacom, the ultimate parent company of Paramount, is,
20 and at all relevant times has been, the ultimate corporate parent of the entity commonly known as
21 MTV Networks.

22 13. On information and belief, at all relevant times, Defendants and their corporate
23 affiliates have been the agents of each other, concerted actors, and/or joint venturers. It is alleged
24 that such agents, concerted actors, and/or joint venturers acted in concert and gave substantial
25 assistance to the conduct resulting in harm to Melrose 2.

26 **THE MULTI-PICTURE INVESTMENT AGREEMENT**

27 14. The basic concept of the Agreement is simple: in exchange for its funding, Melrose 2
28 earned the right to own an undivided interest in the copyright held by the studio (either Paramount or

1 DreamWorks, as applicable) and the right to receive its pro-rata share of the income for each picture
2 it helped to fund.

3 15. The Agreement defines the income of the Melrose 2-funded films as all revenues
4 derived from the distribution and exhibition of each Melrose 2-funded film in all media minus a set
5 distribution fee for the film, certain distribution costs, certain third party participations, taxes and
6 retroactive wage adjustments. Pursuant to the express terms of the Agreement, Defendants must
7 prepare and deliver to Melrose 2 preliminary and final Initial Investment Price Invoices, followed by
8 a Final Investment Price Invoice, for each Melrose 2-funded film (collectively, the "Investment Price
9 Invoices"). The Initial Investment Price Invoices determine the amounts that Melrose 2 initially
10 pays for each Melrose 2-funded film. The Final Investment Price Invoice determines the ultimate
11 amount Melrose pays for each Melrose 2-funded film. In addition, the Agreement provides that
12 Defendants must account to Melrose periodically with fair and accurate Participation Statements.
13 Defendants are required to pay Melrose 2 the amounts owed at the time the Participation Statements
14 are due.

15 16. The Agreement contains a number of other provisions designed to ensure that
16 Melrose 2 actually receives its fair share of the films' profits. For example, because studios often
17 receive revenue or incur costs for a slate of films collectively, the Agreement contains a number of
18 provisions requiring Defendants to apportion all revenues received and costs incurred to each of the
19 Melrose 2-funded films, even if received or incurred partially in connection with other films as well.
20 Similarly, while Defendants retain the right to make business and creative decisions for the films
21 they produced, Defendants are required to enter transactions with affiliates on an arms-length basis
22 and enforce their rights against those affiliates in the same manner that they would against unrelated
23 third parties. And, while Defendants have the right to use their own facilities and personnel for
24 certain work that would otherwise be performed by third parties, Defendants can charge no more
25 than market rates and cannot charge internal costs and overhead as production costs of the Melrose
26 2-funded films.

27 17. In keeping with the overall scheme of the Agreement, Defendants are also not entitled
28 to dilute Melrose 2's profits by giving profit participations to their affiliates and then subtracting

1 those participations before making payments to Melrose 2. Indeed, the Agreement expressly
2 prohibits that type of self-dealing.

3 18. To ensure that Melrose 2 is able to protect its interests, Defendants and their wholly
4 owned subsidiaries are required to keep books and records relating to each Melrose 2-funded film
5 and related transactions, which Melrose 2 has the right to review and audit. Moreover, the
6 Defendants are obligated to take reasonable steps in advance of Melrose 2's audits to make available
7 materials and reasonable staffing so that Melrose 2 can complete its audits in a timely fashion.

8 **DEFENDANTS' ACCOUNTING IMPROPRIETIES**

9 **Defendants Repeatedly Hindered and Refused to Cooperate With Melrose 2's Audits**

10 19. As is customary in the entertainment industry, Melrose 2 began to exercise its audit
11 rights after it had received a certain amount of information about the costs and revenues of its films.
12 In early 2008, Melrose 2's auditors contacted Paramount to notify the studio of its intent to audit the
13 production costs of *World Trade Center*, *Barnyard*, and *Flags of Our Fathers* and request the
14 information necessary to begin the audit.

15 20. Paramount provided two categories of requested items within a few weeks but, for the
16 remainder of the requested items, took one of three tacks: delayed for months, refused to provide the
17 information or simply refused to respond. For example, to date, Paramount has never provided the
18 Paramount facilities agreements and rate cards for the use of its facilities during production, despite
19 an express provision in the Agreement requiring the use of studio facilities to be reasonable and the
20 charges to be non-discriminatory and made in good faith. Similarly, although Paramount claims that
21 *Flags of Our Fathers* ultimately cost nearly twice its budgeted amount, Paramount refused to
22 provide the acquisition agreement for that film, again despite a formal request in early 2008 and an
23 express provision in the Agreement requiring it to do so. And, although tax rebates and German
24 financing deals are common ways of reducing production costs and appear to have been employed
25 for these films, Defendants simply ignored all requests since 2008 for documentation of these
26 accounting devices. Similarly, in connection with a later audit, Defendants failed to provide the
27 domestic and foreign production cost records for *Dreamgirls* and *Norbit*.

1 21. Paramount's obstructionist tactics were even more egregious in connection with
2 Melrose 2's first distribution audit. In September, 2008, Melrose 2 sought to perform a routine audit
3 of the net receipts of the first three films that it had funded: *Barnyard*, *Jackass 2*, and *Nacho Libre*.
4 Although product summaries, work paper packages relating to income and expense items, and
5 domestic distribution expense cost reports are all fundamental documents provided in a net receipts
6 audit and should be readily available, Paramount withheld them for nearly half a year, effectively
7 preventing the audit from taking place during that time. Even more egregiously, Paramount never
8 provided the reconciliations that were requested beginning in 2008, despite express provisions in the
9 Agreement requiring it to do so. Paramount also refused to provide Melrose 2 with the applicable
10 studio facilities agreement and rate cards for any of the productions that would allow Melrose 2 to
11 evaluate the reasonableness of Paramount's high internal facilities charges. Paramount also failed to
12 provide any supporting documentation for charges relating to the theatrical launch costs of
13 *Barnyard*, *Jackass 2*, and *Nacho Libre*.

14 22. Defendants have also been cagey about other sources of revenue. For example,
15 although there appears to be a fair amount of product placement in Melrose 2-funded films such as
16 *Transformers*, *Heartbreak Kid*, *Blades of Glory*, and *Shooter*, Defendants refuse to provide
17 documentation of product placement so that Melrose 2 can determine whether it was properly
18 credited for cost reductions in connection with those deals. Paramount similarly claims that there is
19 no attributable merchandising revenue for *Jackass 2* because such rights are owned by its sister
20 company MTV, yet refuses to provide support for its blanket assertion.

21 23. The above-referenced delays and refusals to provide information are only a
22 smattering of the many examples of this type of conduct. Indeed, on each of the five audits Melrose
23 2 has completed, Defendants refused to provide or, at best, have taken many months to provide,
24 documents that should be provided quickly and without question. These delays have effectively
25 prevented Melrose 2 from completing its audits in the time frames contemplated by the Agreement.

26 **Defendants Repeatedly Underreport The Revenues of the Melrose 2-Funded Films**

27 24. Despite Paramount's delays and obfuscation, Melrose 2 has learned through its audits
28 that Defendants have paid short shrift to their contractual obligations. First, on a routine basis,

1 Defendants have understated the revenues received in connection with the exploitation of the
2 Melrose 2-funded films. For example:

3 a. Although the Agreement expressly prohibits deducting payments to affiliates
4 as "third party participations," Defendants did just that when they deducted payments to their
5 sister company MTV as a third party participant in connection with *Nacho Libre* and
6 *Charlotte's Web*.

7 b. Although the Agreement expressly prohibits deducting payments to Walden
8 Media for *Charlotte's Web*, Defendants again did just that.

9 c. Similarly, although the Agreement requires Defendants to allocate to the
10 Melrose 2-funded films their fair share of money received from foreign licensees, Defendants
11 ignored that provision and kept for themselves revenues received from a pay television
12 provider in France for the distribution rights for *Barnyard*, *Jackass 2*, *Nacho Libre*,
13 *Dreamgirls*, *Charlotte's Web*, *World Trade Center* and others.

14 d. And, Paramount underreported the gross receipts for DVD sales of *Barnyard*,
15 *Jackass 2*, and *World Trade Center*, without any explanation as to why.

16 25. Defendants also refused to allocate, or provide any documentation of, the substantial
17 cash payments and/or discounts they receive from the vendors they use in connection with the
18 production and distribution of Melrose 2-funded films, which Paramount describes as "bonuses."
19 Such discounts -- whatever they may be called -- should be allocated as reductions to the production
20 and/or distribution costs of the studio's films, for example when Defendants use a common vendor
21 for film printing or DVDs, and the Agreement requires that Defendants do so in connection with the
22 Melrose 2-funded films. Defendants, however, have engineered their contracts with house vendors
23 in such a way that these discounts are dubbed "bonuses" (or something similar) and, using this
24 misleading nomenclature, claim that such amounts belong to Defendants alone. Not surprisingly,
25 Defendants refuse to provide any information about these amounts or the agreements through which
26 they are received, despite explicit requests for such information and agreements by Melrose 2 in
27 connection with its audits.
28

26. Even more egregiously, Paramount has kept for itself all of the money it received in connection with its much-touted August 2007 deal with Toshiba, even though the Agreement requires Paramount to allocate a portion of that money to the Melrose 2-financed films. Indeed, to announce the deal, Viacom, Defendants' parent company, issued a press release in which Paramount's Chief Executive Officer boasted that the box office success of two high-grossing Melrose 2-funded films, *Blades of Glory* and *Transformers*, had paved the way for Paramount to land the lucrative deal, reportedly worth \$150 million.



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Paramount and DreamWorks Animation Each Declare Exclusive Support for HD DVD

Movies Distributed by Paramount Home Entertainment Including Paramount Pictures, DreamWorks Animation SKG, DreamWorks Pictures, Paramount Vantage, Nickelodeon Movies and MTV Films to be Released Exclusively in HD DVD Exclusive Program To Begin with Release of "Blades of Glory," Followed by "Transformers" and "Shrek the Third," Films Representing More Than \$1.5 Billion in Combined Worldwide Box Office

27. Now, despite having previously credited the success of these Melrose 2-funded films to its ability to achieve this newsworthy deal, Paramount takes the position that there is no relationship between the monies it received from Toshiba and the films Melrose 2 funded, and therefore Melrose 2 is entitled to no portion of those proceeds.

28. Melrose 2, thus, has seen none of that money. Paramount has refused Melrose 2's written requests for a copy of the Toshiba agreement and provided no documentation about the deal or where the \$150 million went.

1 29. Under the Agreement, Melrose 2 has the right to invest in films that are derivative
2 works of Melrose 2-funded films, even after the investment period contemplated by the Agreement
3 has ended. Defendants have notified Melrose 2 of these options for the derivative works but refuse
4 to share expense information about those films that would be important for anyone making a
5 decision to invest, claiming that the Agreement does not expressly require them to provide such
6 information.

7 30. Defendants also delay reporting revenue, apparently to reduce their own internal cost
8 of capital, at Melrose 2's expense. For example, despite the Agreement's requirement to account for
9 revenues at the time they are received or credited to the studio, Paramount refused to report money
10 that it received for licensing *Barnyard* to Nickelodeon at the time it was received, holding it instead
11 until the picture actually became available for exhibition and thereby depriving Melrose 2 of the
12 interest on those funds.

13 31. The above-referenced examples are but a few of the many instances in which
14 Defendants have improperly reduced the amount of revenues that should be allocated to the Melrose
15 2-funded films. Indeed, in each and every audit Melrose 2 has performed, Melrose 2 has seen
16 numerous examples of underreported income. Melrose 2 has provided Defendants with its written
17 reports showing these errors but Defendants have, to date, never corrected them or paid Melrose 2
18 the amounts it is owed. Rather than pay Melrose 2 these amounts and the interest to which it is
19 expressly entitled under the Agreement, Defendants have held this money and used it for their own
20 benefit.

21 **Defendants Repeatedly Overstate The Costs of the Melrose 2-Funded Films**

22 32. Defendants have also routinely overstated the costs they have incurred in connection
23 with the production and distribution of each of the Melrose 2-funded films. For example,
24 Defendants inexplicably and undeniably overstated the costs of production of *World Trade Center*,
25 *Barnyard*, *Transformers*, *Shooter*, *Dreamgirls*, and *Norbit* but, even when presented with their own
26 records showing these blatant errors, did nothing. Similarly, Defendants charged Melrose 2 for
27 salaries of production personnel in relation to *Transformers* and *Shooter*, despite the explicit
28

1 exclusion of salaries and expenses of any administrative or executive personnel in the definition of
2 Direct Costs in the Agreement. Again, when shown their errors, Defendants did nothing.

3 33. Likewise, Defendants routinely overstate their distribution costs for the Melrose 2-
4 funded films. For example, Defendants outsourced their advertising and promotional work for
5 *Barnyard*, *Jackass 2*, *Nacho Libre*, *Dreamgirls*, *Charlotte's Web*, and *World Trade Center*, charged
6 Melrose 2 for those costs, and then imposed an additional fee for Paramount's in-house staff to
7 supposedly perform the very same work. The Agreement prohibits this type of double-charging by
8 limiting advertising and promotional charges to market rates. Charging double is not charging a
9 market rate.

10 34. In another example of gouging, Defendants charged Melrose 2-funded films nearly
11 \$1.3 million for Paramount's in-house advertising personnel to create websites for *Dreamgirls*,
12 *Charlotte's Web*, and *World Trade Center*. Such charges are clearly not at competitive rates and, not
13 surprisingly, Defendants have refused to provide the rate cards that would belie any such claim.

14 35. Defendants also routinely charge Melrose 2 for overhead costs that are explicitly
15 excluded from the definition of allowable distribution costs in the Agreement. These improper
16 overhead charges include but are not limited to (i) more than half a million dollars allocated to
17 *Dreamgirls*, *Charlotte's Web*, *World Trade Center*, *Barnyard*, *Jackass 2*, and *Nacho Libre*, for
18 attending standard trade shows and conventions that the studios attend in the ordinary course of
19 business; (ii) property premium insurance that is an inherent cost in running a film studio and not
20 allowed under the Agreement; (iii) unspecified charges for anti-piracy efforts; (iv) generic market
21 research; and (v) costs relating to a logo design that would be used generally for Nickelodeon
22 Movies.

23 36. Defendants also had the audacity to charge Melrose 2 for nearly \$3 million in
24 charitable contributions, claiming that these charges were somehow costs of the films. Indeed, while
25 it is admirable that Defendants donate to worthy charities some of the profits they have received,
26 such contributions are simply not production or distribution costs, and should be borne by
27 Defendants, not passed on surreptitiously to Melrose 2.
28

1 37. As with the egregious examples of understating revenue, the above-referenced
2 examples of overstating costs are but a few of the many instances in which Defendants have
3 improperly reduced the amount of income that should be allocated to the Melrose 2-funded films.
4 Indeed, in each and every audit Melrose 2 has performed, Melrose 2 has seen numerous examples of
5 this behavior that, to date, Defendants refuse to correct. Not only do Defendants owe Melrose 2
6 these amounts, Defendants are also contractually required to pay interest on these amounts. But,
7 again, Defendants have held this money and used it for their own benefit.

8 **Defendants' Attempts To Deprive Melrose 2 Of The Benefits Of Its Copyright Ownership**
9 **Have Been Knowing And Willful**

10 38. Defendants are not ignorant of their errors and cannot claim that they have made them
11 in good faith. Melrose 2 began auditing Defendants' accounting statements nearly four years ago.
12 Beginning with its first audits, Melrose 2 found obvious errors in Defendants' favor and made
13 Defendants aware of them by providing Defendants with each of its audit reports as soon as they
14 were completed. Rather than correct those mistakes, however, Defendants failed to correct the Final
15 Investment Price Invoices for the Melrose 2-funded films and continued to make the same errors on
16 subsequent Participation Statements. And, rather than own up to those mistakes, Defendants tried to
17 hide them, largely by delaying and withholding their records. Indeed, not until litigation counsel
18 surfaced did Defendants speed up their provision of information. To date, however, Defendants
19 have not corrected even the most glaring of errors on their Final Investment Price Invoices and
20 Participation Statements nor have Defendants paid Melrose 2 the amounts they clearly owe.
21 Defendants' conduct in this regard stands in stark contrast to what one would expect from an equity
22 partner and co-copyright owner acting in good faith.

23 39. On October 27, 2010, Melrose 2 made timely written objections to each Final
24 Investment Price Invoice and Participation Statement that it had received as of that date and, in the
25 hopes of resolving these issues without litigation, entered an agreement tolling and suspending the
26 applicable statutes of limitations for one year. On October 21, 2011, the Defendants and Melrose 2
27 extended the Tolling Agreement for an additional six months.
28

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract under New York Law)**

3 40. Melrose 2 incorporates by reference each and every allegation set forth above as
4 though fully set forth herein.

5 41. Melrose 2 and Defendants entered into the Agreement, which at all relevant times has
6 remained binding and enforceable.

7 42. Melrose 2 has performed its obligations under the Agreement.

8 43. Defendants' performance of their obligations has not been excused.

9 44. Nonetheless, as set forth in part through the examples above, Defendants have
10 breached the Agreement by underreporting revenues, overcharging and overstating costs, failing to
11 take reasonable steps to provide information in a timely manner, self-dealing, refusing to pursue
12 their rights against affiliates to the detriment of Melrose 2, and refusing to provide basic information.

13 45. Melrose 2 has suffered, and will continue to suffer, damages in an amount as yet
14 undetermined, as a direct result of Defendants' breaches of the Agreement.

15 **SECOND CAUSE OF ACTION**

16 **(Breach of The Implied Covenant of Good Faith & Fair Dealing)**

17 46. Melrose 2 incorporates by reference each and every allegation set forth above as
18 though fully set forth herein.

19 47. Both New York and California law imply a covenant of good faith and fair dealing in
20 all contracts.

21 48. To the extent such acts are not expressly prohibited by the Agreement, Defendants
22 breached the covenant of good faith and fair dealing implied in the Agreement by classifying certain
23 revenues as corporate "bonuses" or corporate opportunities when, in fact, they should have been
24 classified as revenues earned as a result of the exploitation of Melrose 2-funded films and thus
25 allocated to those films.

26 49. To the extent such acts are not expressly prohibited by the Agreement, Defendants
27 also breached the covenant of good faith and fair dealing implied in the Agreement by entering
28 agreements with sister entities in a way that would be detrimental to Melrose 2's interests.

50. To the extent such acts are not expressly prohibited by the Agreement, Defendants also breached the covenant of good faith and fair dealing implied in the Agreement by delaying the provision of some information to Melrose 2 and refusing entirely to provide other information, thereby effectively preventing Melrose 2 from exercising its full audit rights under the Agreement.

51. To the extent such acts are not expressly prohibited by the Agreement, Defendants also breached the covenant of good faith and fair dealing implied in the Agreement by refusing to share customary budget information about derivative works in which Melrose 2 has the right to invest, thereby effectively depriving Melrose 2 of the contractual right to invest in such films.

52. As a result of the Defendants' above-described actions, Defendants have violated the implied covenant of good faith and fair dealing contained in the Agreement.

53. The actions of Defendants in violation of the implied covenant of good faith and fair dealing have caused Melrose 2 to suffer damages in a sum as yet undetermined, and as a result of such violations, Melrose 2 is entitled to damages.

THIRD CAUSE OF ACTION

(Fraud)

54. Melrose 2 incorporates by reference each and every allegation set forth above as though fully set forth herein.

55. On each of their Final Investment Price Invoices and Participation Statements, Defendants made intentional errors in connection with Melrose 2-funded films, such as for film printing and DVDs.

56. On each of their Final Investment Price Invoices and Participation Statements, Defendants concealed the existence of volume discounts and payments they received from common vendors used in connection with Melrose 2-funded films, such as for film printing and DVDs.

57. On each of the Final Investment Price Invoices for the films *World Trade Center*, *Barney*, *Charlotte's Web*, *Dreamgirls*, *Norbit*, *Transformers*, *Heartbreak Kid*, *Blades of Glory* and *Shooter*, Defendants misrepresented the production costs of those Melrose 2-funded films. Specifically, as set forth in the Production Cost Audit of Paramount Pictures dated November 25, 2008, the Production Cost Audit of Paramount Pictures dated April 20, 2010, and the Production

1 Cost Audit of Paramount Pictures dated June 23, 2011, all of which were provided to Defendants,
2 Defendants falsely represented in their Final Investment Price Invoices that:

- 3 a. the production cost of *World Trade Center* was at least \$319,239 greater than the
4 production cost for that film actually was;
- 5 b. the production cost of *Barnyard* was at least \$397,568 greater than the production
6 cost for that film actually was;
- 7 c. the production cost of *Transformers* was at least \$654,557 greater than the production
8 cost for that film actually was;
- 9 d. the production cost of *Heartbreak Kid* was at least \$11,500 greater than the
10 production cost for that film actually was;
- 11 e. the production cost of *Blades of Glory* was at least \$100,000 greater than the
12 production cost for that film actually was;
- 13 f. the production cost of *Shooter* was at least \$663,997 greater than the production cost
14 for that film actually was;
- 15 g. the production cost of *Norbit* was at least \$1,108,882 greater than the production cost
16 for that film actually was;
- 17 h. the production cost of *Dreamgirls* was at least \$170,585 greater than the production
18 cost for that film actually was; and
- 19 i. the production cost of *Charlotte's Web* was at least \$51,500 greater than the
20 production cost for that film actually was.

21 58. On each of the Participation Statements for the films *World Trade Center*, *Barnyard*,
22 *Charlotte's Web*, *Dreamgirls*, and *Jackass 2* and *Nacho Libre*, Defendants misrepresented the Net
23 Receipts of those Melrose 2-funded films. Specifically, as set forth in the Distribution Audit of
24 Paramount Pictures dated September 24, 2009, and the Distribution Audit of Paramount Pictures
25 dated April 21, 2011, both of which were provided to Defendants, Defendants falsely represented in
26 their Participation Statements that:

- 27 a. the Net Receipts of *Barnyard* was at least \$8,408,300 less than indicated by
28 Defendants' internal records;

- b. the Net Receipts of *Jackass 2* was at least \$16,325,800 less than indicated by Defendants' internal records;
- c. the Net Receipts of *Nacho Libre* was at least \$3,814,600 less than indicated by Defendants' internal records;
- d. the Net Receipts of *Dreamgirls* was at least \$2,472,500 less than indicated by Defendants' internal records;
- e. the Net Receipts of *Charlotte's Web* was at least \$4,119,100 less than indicated by Defendants' internal records; and
- f. the Net Receipts of *World Trade Center* was at least \$4,924,600 less than indicated by Defendants' internal records.

59. Defendants' Final Investment Price Invoices were issued by Alan J. Bailey, then Senior Vice President and Treasurer of Paramount. Defendants issued their Final Investment Price Invoices on the dates set forth below:

- a. for *World Trade Center* on August 1, 2007;
- b. for *Barnyard* on July 25, 2007;
- c. for *Charlotte's Web* on July 9, 2008;
- d. for *Dreamgirls* on December 5, 2007;
- e. for *Norbit* on January 29, 2008;
- f. for *Transformers* on July 10, 2008;
- g. for *Heartbreak Kid* on October 3, 2008;
- h. for *Blades of Glory* on April 18, 2008; and
- i. for *Shooter* on December 8, 2008.

60. Defendants' Participation Statements were issued by Carmen G. Desiderio, Paramount's Senior Vice President, Contract Accounting. Defendants issued the first Participation Statements for each of the films set forth below on the dates set forth below:

- a. for *Failure to Launch*, *She's The Man*, *Mission Impossible 3*, *Nacho Libre*, *Barnyard*, and *World Trade Center* in December 2006 for the period ending October 28, 2006;
- b. for *Last Kiss* in January 2007 for the period ending November 25, 2006;

- c. for *Jackass 2* in February 2007 for the period ending December 30, 2006;
- d. for *Flags of Our Fathers* in March 2007 for the period ending January 27, 2007;
- e. for *Charlotte's Web* and *Dreamgirls* in April 2007 for the period ending February 24, 2007;
- f. for *Freedom Writers* in May 2007 for the period ending March 31, 2007;
- g. for *Norbit* in June 2007 for the period ending April 28, 2007;
- h. for *Reno 911: Miami* and *Zodiac* in July 2007 for the period ending May 26, 2007;
- i. for *Shooter*, *Blades of Glory*, and *Disturbia* in August 2007 for the period ending June 30, 2007;
- j. for *Transformers* in November 2007 for the period ending September 29, 2007;
- k. for *Hot Rod* and *Stardust* in December 2007 for the period ending October 27, 2007;
- l. for *Heartbreak Kid* in February 2008 for the period ending December 29, 2007;
- m. for *Things We Lost in the Fire* and *Beowulf* in March 2008 for the period ending January 26, 2008;
- n. for *Sweeny Todd* in May 2008 for the period ending March 29, 2008;
- o. for *Cloverfield* and *Spiderwick Chronicles* in June 2008 for the period ending April 26, 2008;
- p. for *Transformers 2* in October 2009 for the period ending August 31, 2009; and
- q. for *Transformers 3* in October 2011 for the period ending August 31, 2011.

61. At the time Defendants intentionally issued their inaccurate Final Investment Price Invoices and Participation Statements, Defendants knew them to contain false material information and to omit material information.

62. At the time Defendants intentionally concealed from Melrose 2 the above-referenced "bonuses" and other payments from vendors, Defendants knew they were obligated to disclose them.

63. Defendants knew the statements of receipts and costs on the Final Investment Price Invoices and Participation Statements were material representations at the time they made them.

64. Defendants knew the existence of discounts in the form of "bonuses" was a material fact at the time they concealed these bonuses from Melrose 2.

65. Defendants made the above-referenced misstatements and concealed the above-referenced material facts with the intention to deceive and defraud Melrose 2 and to deny Melrose 2 its interest in the Melrose 2-funded films.

66. Melrose 2 justifiably relied on and was deceived by Defendants' false representations and concealments in connection with their Final Investment Price Invoices by paying to Defendants the amounts set forth on those documents.

67. Melrose 2 justifiably relied on and was deceived by Defendants' false representations in connection with their Participation Statements because those false representations caused Melrose 2 to believe, until Melrose 2's audits proved them false, that the amounts on the Participation Statements were the total amounts actually due to Melrose 2.

68. Melrose 2 justifiably relied on the completeness of information on Defendants' Participation Statements because those Participation Statements caused Melrose 2 to believe that there were no additional revenues that should be included in the total amounts actually due to Melrose 2.

69. As a direct and proximate result of Defendants' concealments, Melrose 2 has been injured and has suffered damage in a sum as yet undetermined.

70. Defendants' conduct toward Melrose 2 was willful, malicious, unjust, wanton, oppressive, and done without provocation.

FOURTH CAUSE OF ACTION

(Unfair Business Practices in Violation of Cal. Bus. & Prof. Code § 17200)

71. Melrose 2 incorporates by reference each and every allegation set forth above as though fully set forth herein.

72. As described above, Defendants have engaged in a pattern and practice of falsely reporting revenues and costs properly attributable to the production and distribution of the Melrose 2-funded films. Defendants knew that Melrose 2 would rely on those reports, and indeed Melrose 2 relied on those reports to its detriment. Defendants' actions in this regard were designed to defraud Melrose 2 and thereby keep for themselves income that properly belongs to Melrose 2.

1 73. Although the Agreement contained specific windows in which Melrose 2 was
2 permitted to perform audits and make objections to Defendants' statements of costs and receipts
3 related to Melrose 2-funded films, Defendants intentionally withheld and delayed providing
4 information that Melrose 2 needed to perform its audits and discover Defendants' errors. In
5 addition, Defendants' delays and failures to provide necessary information placed Melrose 2 at risk
6 of losing its ability to take action to enforce its rights under the Agreement. Defendants have
7 engaged in this conduct knowingly, and continue to engage in this conduct without correcting their
8 errors, even though Melrose 2 has notified Defendants of those errors.

9 74. Defendants' above-described acts and practices constitute unfair and fraudulent
10 business practices under Cal. Bus. & Prof. Code § 17200.

11 75. The utility of Defendants' conduct, if any, is outweighed by the gravity of the
12 consequences to Melrose 2.

13 76. Defendants' conduct is unethical, oppressive, and substantially injurious to Melrose
14 2.

15 77. As a direct and proximate result of Defendants' unfair business acts and practices,
16 Defendants have been unjustly enriched and have obtained a monetary benefit at the expense of
17 Melrose 2. Melrose 2 is thus entitled to restitution and injunctive relief.

18 **FIFTH CAUSE OF ACTION**

19 **(Declaratory Relief)**

20 78. Melrose 2 incorporates by reference each and every allegation set forth above as
21 though fully set forth herein.

22 79. Melrose 2 and Defendants entered into the Agreement, which at all relevant times has
23 remained binding and enforceable.

24 80. Under the provisions of the Agreement, Melrose 2 is entitled to receive a portion of
25 the Net Receipts for Melrose 2-funded films, and Defendants must include discounts, rebates, credits
26 and third party reimbursements in the calculation of those Net Receipts to Melrose 2, by allocating
27 them as a credit to offset production costs of the Melrose 2-funded films.
28

1 81. Under the provisions of the Agreement, Melrose 2 is entitled to receive a portion of
2 all revenues from the exploitation of Melrose 2-funded films whether received as a lump sum, a
3 percentage or through any other calculation. Under the provisions of the Agreement, Defendants
4 must also fairly allocate to the Melrose 2-funded films sums received in connection with both
5 Melrose 2-funded films and non-Melrose 2-funded films.

6 82. Under the provisions of the Agreement, Melrose 2 is entitled to audit the Final
7 Investment Price Invoices and the Participation Statements issued by Defendants for the Melrose 2-
8 funded films.

9 83. Under the provisions of the Agreement, Melrose 2 is entitled to invest in certain
10 Derivative Works of Melrose 2-funded films and needs certain information in order to make
11 investment decisions reasonably.

12 84. Actual controversies have arisen and now exist between Melrose 2 and Defendants
13 relating to the legal rights and duties of the respective parties under the Agreement, in that the parties
14 are in disagreement as to whether or not:

15 a. Defendants can withhold for themselves revenue received in connection with the
16 exploitation of a group of Defendants' films that include Melrose 2-funded films;

17 b. Defendants can exclude discounts, rebates, credits, third party reimbursements or
18 "bonuses" from bulk duplicators of Defendants' films or house vendors used in connection
19 with the production or distribution of those films from their calculation of the production and
20 distribution costs charged to Melrose 2-funded films;

21 c. Defendants can withhold customary information and documentation in connection
22 with Melrose 2's audit rights and Melrose 2's rights to invest in Derivative Works as defined
23 in the Agreement; and

24 d. Defendants can delay in providing customary information and documentation in
25 connection with Melrose 2's audit rights, i.e., by providing that information several months
26 after it is requested, rather than a few days or weeks.

27 85. Melrose 2 believes that the true interpretation of the Agreement requires a negative
28 answer to each of the above-referenced disputes.

86. Melrose 2 desires a judicial determination of its rights and duties, and, to avoid an ongoing dispute, seeks a declaration that:

- a. Defendants cannot withhold for themselves revenue received in connection with the exploitation of a group of Defendants' films that include Melrose 2-funded films;
- b. Defendants cannot exclude discounts, rebates, credits, third party reimbursements or "bonuses" from bulk duplicators of Defendants' films or house vendors used in connection with the production or distribution of those films from their calculation of the production and distribution costs charged to Melrose 2-funded films;
- c. Defendants cannot withhold customary information and documentation in connection with Melrose 2's audit rights and Melrose 2's rights to invest in Derivative Works as defined in the Agreement; and
- d. Defendants cannot delay in providing customary information and documentation in connection with Melrose 2's audit rights, i.e., by providing that information several months after it is requested, rather than a few days or weeks.

PRAYER FOR RELIEF

WHEREFORE, Melrose 2 prays that judgment be entered against Defendants for:

- e. compensatory and actual damages;
- f. restitution;
- g. a constructive trust;
- h. a declaration as set forth in Paragraph 86(a)-(d) above;
- i. attorneys' fees and costs, as allowed by law and the Agreement;
- j. interest on damages, as allowed by law and the Agreement;
- k. for punitive damages by reason of the egregious and fraudulent conduct made toward Melrose 2 by Defendants;
- l. injunctive relief;
- m. such other relief as the Court deems proper, fair, equitable, and just.

JURY DEMAND

Melrose 2 respectfully demands a trial by jury.

DATED: November 29, 2011

Kirkland & Ellis LLP

By: 
Mark Holscher
Attorneys for Plaintiff Melrose Investors 2 LP